

No. 21-55395
(Consolidated with Nos. 21-55404 and 21-55408)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LA ALLIANCE FOR HUMAN RIGHTS, et al.

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, et al.

Defendants-Appellants.

Appeal From The United States District Court,
Central District of California, Case No. 2:20-cv-02291
Hon. David O. Carter

**CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES’
SUPPLEMENTAL BRIEF RE STAY**

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I. INTRODUCTION

This Court requested supplemental briefing addressing whether further proceedings in the district court had any impact on the issues presented in the stay motions. Appellants City of Los Angeles (“City”) and County of Los Angeles (“County”) submit this brief to explain why the district court’s May 27, 2021 hearing amplified, rather than mitigated, the need for a stay pending appeal.

II. THE ORDER SETTING FURTHER PROCEEDINGS

On April 20, 2021, the day after appellants and intervenors filed their oppositions to appellee LA Alliance’s motion for preliminary injunction, the district court issued its 110-page mandatory injunction. On April 21, the County appealed. On April 23, the City and Intervenor CANGRESS followed suit. Appellants then filed *ex parte* applications asking the district court to stay the injunction pending appeal.

On April 25, the district court granted in part, and denied in part, the applications. The court temporarily stayed two provisions, added a new obligation on the City, but left in place all other directives. The court also set a May 27 hearing to “receive evidence as to what properties are available for homelessness relief” and to hear

from appellants and any other interested parties on the court's findings on structural racism.

The district court added an admonition: "Without a global settlement, the Court will continue to impose its April 20, 2021 preliminary injunction, subject to certain modifications in response to the City and County's Applications to Stay Pending Appeal (Dkts. 282, 284)[.]"

III. THE MAY 27 HEARING

At the May 27 hearing, the district court reiterated its view that structural racism is a driving force behind the homelessness crisis in Los Angeles. In addition to the parties and intervenors, the district court heard from the Chair of the County's Board of Supervisors, Hilda Solis; City Councilman Kevin de Leon; City Controller Ron Galperin; and community members General Jeff (Skid Row Housing Trust), Pastor Stephe Cue (Row Church), Amy Turk (Downtown Women's Center), and Manny Abascal (Union Rescue Mission).

Despite the district court's reference to the receipt of "testimony" in the minutes from the May 27 hearing, there was no "testimony" or "evidence" presented by the parties at the May 27 hearing. Appellants tried to bring the court back to the case or

controversy requirement, explaining that Plaintiffs had never alleged an equal protection violation on the basis of race. Appellants argued that because race is not alleged in the complaint, the injunction does not comport with the case or controversy requirement of Article III of the U.S. Constitution. *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013) (generalized grievance does not state case or controversy).

Intervenors weighed in, reminding the court of what Plaintiffs *did* allege: the impact of homelessness on landlords and property owners, and gentrification.

At the May 27 hearing, nobody contested the existence of racism. Indeed, appellants acknowledged the obvious: it would be challenging, if not impossible, to find a societal dilemma in this country that is *not* impacted by racism. But that is not why the parties are in federal court.

IV. THE COURT DID NOT MODIFY THE INJUNCTION AND DID NOT ALTER THE NEED FOR A STAY

Throughout the hearing, the district court reiterated that it would not modify the injunction in any way. In fact, the district court told appellants that, if this Court allowed the administrative stay to expire and did not issue a stay pending appeal, all prior deadlines in

the injunction would remain in place. That would essentially force appellants into contempt the minute the stay is lifted.

After the hearing, the district court issued a minute order. It left the mandatory injunction, and its purported factual findings, in place. The court described those findings in this way: “[T]he Court found that structural racism in the form of freeway construction, eminent domain, exclusionary zoning, redlining, and unequal access to shelter and affordable housing was a driving force behind Los Angeles’ homelessness crisis.” (2-ER-312.) But not one of these allegations of racism is alleged in the complaint. *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) (“A court’s equitable power lies only over the merits of the case or controversy before it.”). The district court injected this issue into the case and then proceeded to adjudicate it by issuing its mandatory preliminary injunction.

The court modified its previous rulings on appellants’ request for a stay in two minor ways, by extending the stay of the provision in the Order (1) that appellants cease all land sales and transfers until after the appeal, and (2) that the City escrow \$1 billion until

October 18, 2021. This only delays, but does not eliminate, the irreparable injury that these provisions will cause.

A. The May 27 Hearing Confirmed The District Court's Plan To Dictate Homeless Services

The stated goal of the May 27 hearing was to “address the parties’ concerns” by offering to “receive testimony from the City and County” on the district court’s findings on racism. The hearing did not address appellants’ concerns but, rather, was a platform for the district court to reiterate *its* concerns about homelessness, express *its* frustrations with the current state of affairs, and confirm *its* intention to take over the operations and finances of appellants’ municipal efforts to address homelessness in Los Angeles. The court also admitted it issued its preliminary injunction because appellants had not settled the litigation. For example:

- “So you’re here because the City and the County cannot reach those kinds of agreements, and that’s going to cause this Court to be very diligent.” . . . “And so if you and the City can’t turn this around, you’re going to give that to the Court to make that effort.” (2-ER-157.)

- “So hopefully I’m looking for a political solution. But if you’re not capable . . . then the Court’s going to be very diligent on this.” (2-ER-159.)
- “[T]he Court's only involved because you couldn’t reach an agreement, an omnibus agreement on behalf of all the citizens – the homeless, the public. And therefore, the Court will stay involved until -- or if you do, or we're heading for litigation.” (2-ER-307.)

The May 27 hearing heightened appellants’ concerns in other ways. In putting on a presentation about how local government, in the district court’s view, has fallen short, the court reaffirmed its intention of using the preliminary injunction to serve as the “Homeless Czar” in Los Angeles. But there is no legal basis for such an intervention in this case; the court is not an elected official or a policy expert, and is substituting its judgment for the judgment of those who are.

Hollingsworth, 570 U.S. at 700 (Article III “case or controversy” requirement “ensures that [federal courts] act *as judges*, and do not engage in policymaking properly left to elected representatives”). The district court’s displacement of the appellants to install itself in charge

of their municipal functions providing homeless services will cause upheaval and disruption.

The district court's statements underscore the risk of irreparable harm if the court were allowed to inject itself in appellants' decision-making processes.

B. The Need For A Stay Is Even Greater Now

The district court altered course in one way: it told appellants to adhere to the previously issued deadlines—even though this Court imposed an administrative stay of the injunction three weeks ago:

- “But I’m warning the City and the County that if the Circuit has me go forward, these times are going to put you under a lot of pressure because I’m not changing them.” (2-ER-174.)
- “But if they lift that stay, you’ve got about 30 days to get this information together for me because I’m not backing off my dates. Okay? They’re going to have to stay it permanently, in other words. So I’m putting you on fair notice.” (2-ER-187.)

If a stay is not issued, appellants will be left scrambling to implement provisions in an injunction that advocates have warned

will do more harm than good. Given the court's comments that it would not alter any deadlines, appellants will also face the dilemma of finding themselves in immediate contempt.

V. CONCLUSION

Appellants have established the likelihood of success on appeal, irreparable harm, and that the balance of hardships and public interest strongly favor a stay. The May 27 hearing confirmed that the district court's factual findings are not tethered to this case or the plaintiffs who brought it. Appellants need immediate relief from this Court. Appellants respectfully ask the Court to grant their motions and stay the injunction pending appeal.

DATED: June 3, 2021

MILLER BARONDESS, LLP

By: /s/ Mira Hashmall

MIRA HASHMALL
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DATED: June 3, 2021

OFFICE OF THE CITY
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067.

On June 3, 2021, I served true copies of the following document(s) described as:

**CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES'
SUPPLEMENTAL BRIEF RE STAY**


on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 3, 2021, at Los Angeles, California.



Angelica R. Ransom

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